

SINGAPORE: HUMAN RIGHTS REPORTING BY ANOTHER NAME?

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Legal Briefings - By **Anthony Crockett** and **Sarah Hawes**

The Singapore Exchange (SGX) has introduced mandatory sustainability reporting with effect for financial years ending on or after 31 Dec 2017.

The Singapore Exchange (SGX) has [introduced](#) mandatory sustainability reporting with effect for financial years ending on or after 31 December 2017.

This follows a trend in reporting requirements started in the UK and across Europe and, which is being implemented across Asia – both the Hong Kong and Malaysian Exchanges have recently implemented upgraded rules on “ESG” or sustainability reporting.

PRIMARY REQUIREMENTS - COMPLY OR EXPLAIN

The sustainability report – which can be included in a company’s annual report, or published as a separate document – must describe a SGX-listed company’s sustainability practices with reference to:

- (a) material environmental, social and governance (ESG) factors;
 - (b) policies, practices and performance;
 - (c) targets;
 - (d) sustainability reporting framework; and
 - (e) board statement describing the company’s sustainability actions,
- (new Rules [711A](#) and [711B](#)).

Singapore has adopted the 'comply or explain' model in its reporting requirements, the same model as is used in the UK, EU and Hong Kong. If an SGX-listed company does not report on any of the above, it must state this in its sustainability report and include its reasons for doing so. Therefore there is no new obligation to have new ESG policies, but SGX-listed companies who do not currently have such policies should consider whether it is appropriate to put them in place.

There is a transitional provision giving companies up to 12 months from the end of the financial year to publish their first report (for financial years ending on or after 31 December 2017). After their first report, companies have to publish a sustainability report at least once a year, no later than five months after the end of each financial year.

The SGX has published a Practice Note ([7F](#)) containing its Sustainability Reporting Guide (SGX Guide) which provides detailed guidance on the expected structure, contents and preparation of the sustainability report.

ESG FACTORS

The SGX Guide states that the sustainability report should identify the material ESG factors to a company, and describe both the reasons for and the process of selection, having taken into account their relevance to the business, strategy, business model and key stakeholders.

In broad terms, the SGX Guide explains that in the SGX's view:

- environmental factors would include materials, energy, water, emissions, effluents and waste, as well as environmental complaint mechanisms; and
- social factors would include health and safety, employment practices and labour rights such as collective bargaining, gender diversity, as well as product responsibility, anti-corruption and supplier assessments.

Corruption and diversity are two areas where the SGX Guide states that cross-referencing to other reports, such as the corporate governance or annual report, is permitted. The SGX Guide also suggests that if they are not assessed to be material ESG factors in the context of a particular company but stakeholders have expressed interest in the information, the company should instead state its relevant policy and safeguards on its website.

The SGX Guide also encourages SGX-listed companies in preparing their sustainability report to consider persons and processes in the value or supply chain that contribute to the company's product or service. Parts of the business outsourced to third parties (for example, freight and logistics), as well as downstream processes (for example, product recalls), constitute an integral part of a company's business and therefore, in the SGX's view, need to be included in the sustainability report.

SUSTAINABILITY REPORTING FRAMEWORK

In the SGX Guide, the SGX states that it does not advocate a particular sustainability reporting framework; instead it expects companies to carefully select an appropriate framework for their business model and industry, placing "importance on using a globally-recognised framework for its wider acceptance in an increasingly global marketplace". Among the well-known and globally-recognised sustainability reporting frameworks, the SGX Guide mentions:

- the Global Reporting Initiative Sustainability Reporting Guidelines, which set out generic sustainability factors and general principles and indicators that an issuer can use to report sustainability policies, practices, performance and targets;
- the International Integrated Reporting Council's Framework;
- the Sustainability Accounting Standards Board's standards, which adopt an industry-specific approach to material ESG factors; and
- the Climate Disclosure Standards Board and the Carbon Disclosure Project for industries sensitive to environmental matters, such as mining, minerals and agriculture, while standards of the Roundtable on Sustainable Palm Oil may be the choice of an issuer in that industry.

The United Nations Guiding Principles on Business and Human Rights, the global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity, are not mentioned in the SGX Guide. However, for all SGX-listed companies with an existing human rights policy or looking to put one in place, they would presumably still be the best place to start and be considered compliant by the SGX.

More than one sustainability reporting framework may be chosen as relevant to the issuer's business. The SGX expects companies to follow the chosen framework(s) from year to year - only major changes in business strategy and/or model are likely to require change in sustainability reporting framework.

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The new Singaporean reporting requirements are less specific (and therefore arguably less onerous) than, for example, the UK Companies Act requirements. There is no express requirement to report on community and human rights issues, which is included in the current UK requirements and will be included in the EU-wide requirements from 2017. However, SGX-listed companies seeking to comply with the growing body of international best practice on CSR reporting, and therefore meet international investor expectations, may elect to report in line with one of the international reporting frameworks which require reporting on human rights. It would be difficult for most companies to argue that human rights in some shape or form are not material to their business.

Given the wide drafting of the rules, any SGX-listed company which ignores human rights issues in its sustainability reporting may disappoint its stakeholders, and ultimately the SGX.

ABOUT THE AUTHORS

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Herbert Smith Freehills LLP has a Formal Law Alliance (FLA) with Singapore law firm Prolegis LLC, which provides clients with access to Singapore law advice from Prolegis. The FLA allows the two firms to deliver a complementary and seamless legal service.

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